1945 File No. S. Dwr. 2/45

examined

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Legal DEPARTMENT

A BRANCH

Subject:— Suits ~~[illegible]~~ Dharwar

CS no 106 of 1944.

1) Shanker Sadashiv Barker — Pltff

vs.

2) The Province of Bombay & 4 others. — Defts.

Claim = Rs 500/-

(C.A. No 194 of 1945.)

File No. S Dwr. 2/45

Std. Sectt. Slip 24-B

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L.C. suit No. 106 of 1944.

17

In the Court of the First Class Sub-Judge,
at Dharwar.

Plaintiff :- Shankar Sadashivarao Borkar, age 49, Caste Gowd Saraswat Brahmin, Occupation Government Service, of Karwar.

28/4/44

Against.

Defendants : 1). The Province of Bombay.

2). Saheb Husen (
3). Mahamad Gous.) Fakir Mahamad Gokak.
4). Maktum Husen. (

5). Bibijan kom Abdul Ahamad Gokak(wife).

Claim : 500/- plus interest.

The plaintiff above named begs to state and submit as follows :-

1). Plaintiff, who is a Government Servant, was a Treasurer in the Dharwar Huzur Treasury, from 9-2-1940 to 26-12-1941. Mr. A.F.Gokak, now deceased, the (father &c) of deft 2, was then holding the post of the Shroff in currency notes.

2) On 3-1-1941, the plaintiff took out of the single lock balance (Treasurer's balance) currency notes worth Rs . 5530/- and handed them over to the shroff Mr. A.F.Gokak. The total sum was made up of 1 dunble of a 100 rupee note worth 100, 4 bundles of 10 rupee notes worth Rs . 3100/-, 3 bundles of 5 rupee notes , each of 100 in number, worth 1500, one bundle of soiled 5 rupee notes, 86 in number worth Rs . 430 and another 1 bundle of 5 rupee notes 80 in number worth Rs . 400/-. in all 10 bundles worth Rs . 5530/-. These bundles were placed under double locks by the Treasury Officer on 30-12-1940, i.e. the closing day of the previous month, after the balance was verified by the Personal Assistant to the Collector of Dharwar. Exactly the same bundle s that

were kept in the Strong room on 30-12-1940 were issued to the shroff on 3-1-1941 - the next reopening day - day by counting the number of bundles only as required by clause (3) Article 14 of the Resource Manual. Mr. Gokak after counting the bundles that were given to him made the necessary entries (the value in rupees of the said 10 bundles) in the Shroff Karkun's cash Book. After Mr. Gokak verified the amount and took possession thereof, the plaintiff went back to his own other work.

3). After about 20 minutes, Mr. Gokak reported that he had only received Rs. 5030/- and not Rs. 5530/- . On enquiry, it was found that one bundle of 5 rupee notes (100 in number) was missing. A dispute arose as to the legal liability for the missing bundle, and the Collector Dharwar ordered, under his No. L.S.T.S.R. 1236/12-8-1941 that the plaintiff should make good the loss. The plaintiff went in appeal to the Commissioner S.D. and further to the Government of Bombay, but the order of the Collector was confirmed by them under R.D.S.T. A.L. 606 of 11-11-1941, and R.D.No. 6569 2/39 of 16-10-1942, respectively.

4). In pursuance of the order of the Collector, the plaintiff has no other alternative but to pay the sum of Rs. 500 which he did on 3-1-1941. It is submitted that the plaintiff's responsibility ceased as soon as the bundles were actually taken possession of by the shroff Mr. A.F.Gokak and that the orders holding the plaintiff liable for the said sum of Rs. 500/- are all ultra vires and null and void. The sum of Rs. 500/- has been illegally and wrongfully recovered from the plaintiff. It is to be specially noted that this is not a case where the notes in a bundle have come short, but a case where a whole bundle is found missing after changing hands. Under these circumstances, plaintiff is compelled to file a suit for the refund of Rs. 500/- with interest at 6 % from 3-1-1941.

5). It is submitted that defendant 1, the Province of Bombay is liable to make good the loss since it was under the illegal

orders of defendant 1 Government and their Officers that plff was held liable and the amount recovered from him. Fr.A.F.Gokak deceased, would be also liable as he has received and retained the benefit under the said illegal orders. Now Fr.A.F.Gokak having died, his heirs are made parties in this suit. At all events, either all defendants, jointly and severally, or either defendant 1 or the others in the alternative, would be liable to the plaintiff. Hence all the defendants are made parties.

6). Notice of suit against defendant I under section 80 of the Civil Procedure Code has been duly delivered to the Collector, Dharwar.

7). Cause of action arose on 10-11-1942, when plff came to know of the order of Government or on 3-1-1941 when plaintiff was made to pay the sum of . 500/-.

8). The suit is valued at Rs. 500 plus interest at 6 % total 594 both for Court fee and jurisdiction. The Province of Bombay being a party to the suit, the suit is filed in this Court.

9). Plaintiff prays as follows :

a). Defendants, or either the one or the other defendant as the Court may determine, be ordered to pay Rs. 594/- to plaintiff.

b). Future interest upto the date of payment be awarded at 6 %

c). All costs of suit be awarded.

d). Any other reliefs to which plaintiff may be found entitled be awarded.

Dharwar.

28-2-1944.

I, Shankar Jadashivarao Borkar, of Dharwar, the above named plff do hreby on solemn affirmation state that hat is stated in the above paras is true to the best of my knowledge and believe and I believe the same to be true.

Dharwar.

28-2-1944.

Plaintiff.

DHARWAR CIVIL SUIT NO. 106 of 1944.

This relates to Dharwar Civil Suit No. 106 of 1944. The facts are set out in detail in the accompanying chronological statement of facts. The plaintiff was Treasurer in the Dharwar Huzur Treasury. On 3rd January 1941 he took out the single lock balance and handed it to the shroff. The latter reported after about 15 or 20 minutes that one bundle of five-rupee notes (100 notes worth Rs.500) was missing. The Treasury Officer made an inquiry the same day and required the plaintiff to make good the loss which the latter did. Thereafter the Collector held an inquiry and he too fixed the responsibility for the loss on the plaintiff. Plaintiff's appeals to the Commissioner and the Government failed. He now sues for refund of the amount with interest.

2. The suit depends mostly upon facts. The notes were in bundles. According to the plaintiff, the number of bundles were counted when the money was handed to the shroff, and so there couldn't be a whole bundle missing. The whole question in the suit is whether the bundles, as distinct from the notes contained in them, were in fact so counted. According to the shroff plaintiff just placed the whole balance on the table and busied himself in other work while the shroff was verifying the bundles and notes.

3. The Collector accepted the shroff's story and held that the loss did not occur on 3rd January 1941. According to him the bundle might have been removed, with or without the knowledge of plaintiff, on the previous working day. However, taking a strict view of plaintiff's responsibility for the single lock balance, he made the order against plaintiff.

4. The defence is based upon the Collector's findings. The shroff however is now dead, and the absence of his personal testimony may weaken the Government's case somewhat.

5. Defence of the suit may be sanctioned on the li

of the appended brief. The Collector appears to think (vide his report) that plaintiff cannot file a suit for refund because the orders passed by Government cannot be challenged in a Civil Court. Herein there appear to be various misconceptions about law: See the paragraph headed 'Jurisdiction' in the Collector's Grounds of Defence. The Collector refers to sections 240 to 243 of Government of India Act and the decision in 39 Bom. L.R. 699. That decision was that a servant of the Crown cannot recover damages for dismissal against the Crown because he holds office only during the pleasure of the Crown. It is clear that the decision and the sections referred t have no bearing here. A departmental inquiry cannot oust the jurisdiction of Courts. Even in regard to dismissal, though a claim for damages cannot be made, the Courts are competent to make certain declarations. In the present case if money has been wrongly recovered from the plaintiff, he has a cause of action. It is a suit for money had & received The suit must hence be defended on merits.

A draft written statement is put up for approval

4/11

RLA 7/11/44

Secy R.D. 7/11

x No. 7763
8-11-44

In the Court of the First Class Sub-Judge, Dharwar.

Civil Suit No.106 of 1944.

Shankar Sadashivarao Borkar .... Plaintiff.

versus

The Province of Bombay and others .... Defendants.

Written statement of defendant No.1 abovenamed is as follows:

1. The plaintiff's claim is not true and is denied.

2. With regard to paragraph 2 of the plaint it is denied that on 3-1-1941 plaintiff took out of the single lock currency notes worth Rs.5530/- and handed them over to the shroff. This defendant submits that the notes which plaintiff took out of the locks and handed to the shroff were worth Rs.5030/- only and that they did not contain the missing bundle. This defendant has no knowledge that the missing bundle was among the bundles placed under double locks as alleged by the Treasury Officer on 30-12-1940 after the verification by the Personal Assistant to the Collector, and the plaintiff's allegation in this respect is not admitted. It is next denied that on 3-1-1941 the notes were issued to the shroff "by counting the number of bundles only as required by clause (3) article 14 of the Resource Manual". This defendant submits that no counting as alleged was done, but that plaintiff simply threw on his table the bundles he had taken out from the locks and asked the shroff to take charge of them; that the shroff then began to count on the same table in the presence of the plaintiff although plaintiff occupied himself otherwise than in attending to the counting being carried on by the shroff; and that it was 15-20 minutes after the notes were placed on the table that the shroff brought the shortage to the plaintiff's notice. The shroff made his entries before verifying the amount. The plaintiff's allegations are not true and are denied.

3. With regard to para.4 of the plaint the contention that 'plaintiff's responsibility ceased as soon as the bundles were actually taken possession of by the shroff', this defendant

states that plaintiff merely placed the bundles on the table and the shroff was verifying the amount, that there was no actual possession ~~by~~ of the shroff and that the plaintiff's responsibility never ceased. This defendant contends that the orders passed by the Treasury Officer, the Collector, the Commissioner and the Government were intra vires and valid. The amount of Rs.500/- was properly recovered from the plaintiff. Plaintiff's allegations are denied.

4. With regard to paragraph 5 of the plaint it is denied that the defendants or any of them are liable in this suit. Plaintiff's all allegations and contentions are denied.

5. Plaintiff is not entitled to any relief and his suit should be dismissed with a separate set of costs in favour of this defendant.

District Government Pleader,
Dharwar.

I , District Government Pleader, Dharwar, do hereby solemnly declare that what is stated in paragraphs 1 to 5 above is true according to the information received and believed to be true. This verification is made at on the day of 1944.

District Government Pleader,
Dharwar.

Dharwar.

For a refund of Rs. 594 alleged to be illegally recovered from the plaintiff.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7852.

Bombay Castle, 10th November 1944.

Letter from the Collector of Dharwar, No. L. A. W. 446, dated the 26th July 1944—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, DHARWAR.

Civil Suit No. 106 of 1944.

Shankar Sadashiv Borkar .. Plaintiff;

versus

The Province of Bombay and fo r others .. Defendants.

Claim—Rs. 500.

Endorsement by the Commissioner, Southern Division, No. L. S. T. 315, dated the 5th August 1944—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 7851, dated the 10th November 1944—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original

P. N. MOOS,
Secretary to Government.

G. R. No. 7832, L. D., dated the 10th November 1944.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

Issued
11/1

*With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to

Submitted after issue.
2. File in a new suit file

12/1

P.A. 12/1

S. Dwr. 2/45
13/1/45

DHARWAR CIVIL SUIT NO. 106 OF 1944.

Chronological Statement of Facts.

The plaintiff sues to recover Rs. 594 from the defendants or any of them.

2. From 9th February 1940 till 26th December 1941 plaintiff was officiating as a Treasurer in the Dharwar Huzur Treasury. Mr. A. F. Gokak the deceased father of defendants Nos. 2 to 4 and husband of defendant No. 5 was then holding the post of Shroff in the same office.

3. On 3rd January 1941 at about noon plaintiff and the Treasury Officer Mr. Allabux opened the Treasury and gave currency notes of the value of Rs. 81,000 to the Shroff. Thereafter plaintiff called the Shroff to receive the single lock balance and states that he handed to the Shroff currency notes of the value of Rs. 5,530 in bundles described below :—

	Rs.
1 bundle of a 100 rupee note	100
4 bundles of 10 rupee notes out of which 3 bundles contained 100 notes each and 1 bundle was broken	3,100
3 bundles of 5 rupee notes each bundle containing 100 notes	1,500
1 bundle of 86—soiled 5 rupee notes ..	430
1 bundle of 80, 5 rupee notes	400
10	5,530

The Shroff who was counting at a distance of "one and half spans" reported 15 or 20 minutes afterwards that one bundle of 100 five-rupee notes was missing.

4. The Treasury Officer was called, the single and double locks were searched, the persons of the parties also were searched, but nothing was found. The people who had come to receive payments from the Treasury, it being the first working day of the month, had been cleared by the peons on the direction of the plaintiff even before the single lock was opened and so were not near the table when the money was taken out of the single lock and was being counted.

5. The Treasury had been verified by the Personal Assistant to the Collector on 30th December 1940, which was the last working day of the previous month.

File I, page 19.

6. On the evening of 3rd January 1941, the Treasury Officer held an inquiry, fixed the responsibility for the shortage on plaintiff, and ordered him to make good the amount. Plaintiff paid the amount under protest.

File I, page 35.
File I, page 33.

7. On 4th January 1941, the Treasury Officer submitted a report to the Collector. On 24th January 1941, plaintiff requested the Collector to make a further inquiry, observing that he had made no breach in the Treasury rules. On

File I, page 45.

6th February 1941, plaintiff filed an appeal to the Collector from the Treasury Officer's Order of 3rd January 1941.

8. After a further inquiry the Collector dismissed the plaintiff's appeal on 12th August 1941. He did not believe that the loss occurred on 3rd January 1941, but that it was possible that on the night of 30th December 1940, after the verification made by the Personal Assistant to the Collector the bundle in question had been removed by somebody with or without the knowledge of the plaintiff. He nevertheless, under the rules, held plaintiff responsible for the loss.

9. Plaintiff preferred an appeal to the Commissioner, Southern Division, on 11th September 1941, but it was dismissed on 11th November 1941. He made a last appeal to the Government, but that also was rejected by letter No. 6569-E/39 (Revenue Department), dated 16th October 1942.

10. On 28th December 1943, plaintiff gave notice of uit under section 80, Civil Procedure Code, and filed the resent suit on 28th February 1944.

Grounds of Defence.

The suit should be defended on merits.

2. It is necessary in the first place to know clearly the findings arrived at by the Collector. The first finding is that the loss did not occur on 3rd January 1941 which means that the missing bundle was not handled that day either by plaintiff or by the shroff Mr. Gokak. The second finding is that the bundle was removed by somebody with or without the knowledge of the plaintiff sometime after the verification of the Treasury by the Personal Assistant to the Collector on 30th December 1940. It is thus clear that plaintiff is not directly charged with the removal of the bundle. His liability has been fixed strictly under the Treasury rules. The Commissioner agrees with that view and observes that the Collector's decision "is in conformity with article 7(*a*) read with article 13 of the Resource Manual".

3. The first finding is one of fact. The second finding that the loss occurred after the Personal Assistant's verification necessarily follows, though no specific allegation is made against plaintiff or anybody else. It is however clear that the decision, though a matter of pure law, could be supported only when the first finding of fact is established. This case therefore largely depends upon facts, that is on what took place on the noon of 3rd January 1941. If the plaintiff could show that it was Mr. Gokak who was responsible for the loss, the Government recovery of the amount from plaintiff becomes illegal and plaintiff would be entitled to a decree. Hence, in order to determine the facts, the statements made by both the plaintiff and Mr. Gokak before the Treasury officer and the Collector respectively should be studied carefully.

4. It is an important circumstance that in his first statement recorded on 3rd January 1941 the plaintiff did not say that when he handed the single lock balance to Mr. Gokak, there was any counting of the bundles. "I handed over the abovementioned currency notes (bundles) to Mr. Gokak, who began to count them in my presence on my table, telling the pensioners and peons to be silent. I was doing my work of writing all the bills and chits". With this may be compared Mr. Gokak's written statement made on 29th March 1941 in respect of the charges preferred against him: "Mr. Borkar threw the bundles of notes on his table and asked me to take charge of them. I began to count them in his presence on his table itself. Mr. Borkar sat in his chair on one side of the table, and I stood on the other side of it counting the notes". This statement and plaintiff's aforesaid statement of 3rd January 1941 agree. Whether or not what the parties did was according to the prescribed procedure is not the question; the question is what actually happened and the following allegations in the plaint seek to give a very different impression from that given by plaintiff's statement of 3rd January 1941. "Exactly the same bundles that were kept in the storing room on 30th December 1940 were issued to the Shroff on 3rd January 1941 by counting the number of bundles only as required by clause (3), articles 14 of the Resource Manual. Mr. Gokak after counting the bundles that were given to him made the necessary entries in the cash book. After Mr. Gokak verified the amount and took possession thereof, plaintiff went back to his own other work". It should be pointed out that whatever article 14 (3) or any other article might prescribe, the real question is what actually took place, and it should be contended that the bundles were not in fact counted but that what must have happened was as described in Mr. Gokak's written statement of 29th March 1941.

5. Mr. Gokak in his written statement of 29th March 1941 proceeded to state that "After I counted the 10 rupee bundles, I began to count the 5 rupee note bundles, when I found the shortage" etc. In his statement of 3rd January 1941, Mr. Gokak said that plaintiff gave the 100 rupees note and asked for a note to be made of it, that then plaintiff "handed" the 10 rupee note bundles, and that after the soiled and broken bundles were counted plaintiff "handed" the 5 rupee note bundles. Mr. Gokak cannot have meant that the bundles were "handed" to him on three different occasions according to the denominations of the currency notes; that is not even the plaintiff's case though it should have been very much favourable to him, and all that Mr. Gokak must have meant was that he took off from the table the 100 rupee note first, then the 10 rupee note bundles and lastly the 5 rupee note bundles. This is clear from his statement before the Collector on 26th May 1941 when he was also cross-examined by plaintiff. "He placed the bundles on his table. I detected the deficit after 15 minutes. I did not count the bundles on the table".

6. As all the while the money was lying on the table between the two men, no outsider is likely to have removed the missing bundle without their knowledge. Their own persons were immediately searched and the bundle was not found on them. The inference to be made is that the bundle was never taken out of the locks that day. That supports the Collector's finding.

7. The only point that now remains to be considered is the legality of the decision according to the rules. The missing amount was from the single lock balance which remains in the separate custody of the Treasurer and he cannot be absolved from responsibility for its loss unless he proves that the loss occurred through some other person's negligence after he had duly parted with it. Plaintiff's contention is that he had so duly parted with it and that the loss occurred from Mr. Gokak's hands. But if all the facts are considered, that plaintiff placed the whole of the single

lock balance on the table without counting the bundles, that there and then Mr. Gokak started counting the notes and reported the shortage, it really cannot be said that plaintiff had finally handed the money or parted with it so as to end his own responsibility and to fix it on Mr. Gokak. That plaintiff turned his attention to some other work while Mr. Gokak was counting was an irregularity on plaintiff's part, and his inattention cannot have the effect of transferring the responsibility from him to another. As stated in rule 7A of the Resource Manual plaintiff was responsible for the handling of the money at the treasury.

8. The case made by the plaintiff is disposed of as above and no other could really be considered. Nevertheless in view of the Collector's finding that the loss occurred on the night of 30th December 1940 after the Personal Assistant's verification some observations may be made here. It may possibly be contended that rule 13 provides that the sum held in the separate custody of the Treasurer should be seen and roughly verified by the Treasury officer every night and locked up in the vaults under double locks, that if the missing bundle had disappeared after the Personal Assistant's verification, the Treasury officer would have noticed the shortage at the time of his rough verification on the night of 30th December 1940, and that consequently the Treasury officer should have been held jointly responsible with the plaintiff. In reply, first, it may be pointed out that such a contention was never before made by the plaintiff. It involves questions of fact, and it also involves the Treasury officer who is not before the Court; in his absence the facts cannot be decided and the contention is not tenable. Secondly, even if the Treasury officer were jointly responsible with the plaintiff, under the Indian Law all joint liability is joint and several, and it was open to the Government to recover the loss wholly from one only of the joint wrong doers. Hence also the contention would not be tenable.

9. For all these considerations it should be contended that the suit fails and should be dismissed.

~~47~~ 15

Suits:
Dharwar
For a refund of Rs.594 alleged to be illegally recovered from the plaintiff.

GOVERNMENT OF BOMBAY,
Legal Department
Resolution No. 8057
Bombay Castle, 29th October 1945.
Read Govt. Resolution L.D.No.7852 dated 10th Nov. 1944
Letter from the Collector of Dharwar No.L.A.W.446,

at P 31

dated 27th September 1945, forwarding letter from the Distric Government Pleader, Dharwar and copy of the Judgement in the Civil Suit noted in the margin wherein the following order is passed:-

In the Court of the First Class Sub-Judge, Dharwar. Civil Suit No.106 of 1944. Shankar Sadashive Borkar -- Plaintiff; Vs. The Province of Bombay and four others -- Defendants Claim Rs.500/-	

"Suit dismissed with costs. Plaintiff to pay the costs of the Defendants. One set for Defendant No.1 and another set for Defendants No.2 to 5".

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

R. M. Mehta

P.N.MOOS
For (Secretary to Government.

Orders at P. 32
The G.R. sanctioning defence of the appeal on this suit will be original put up after necessary corrections

To

The Revenue Department,

The Commissioner, Southern Division,

The Collector of Dharwar.

Subd. for signature
Mak 27/10

A.S. Not correct. Please insert the in the preamble, the number and date of the G.R. sanctioning the defence of the suit (Slip A).

Issued
VSP 29/10

27/10
Mr. Kulkarni

Resubmitted, for signature, after correction.

Mak 29/10 A.S.

17 ~~53~~

Copy was applied for on the ( )

Clerk of the Court.

It was ready for delivery on the ( )

Clerk of the Court.

It was

Clerk of the Court.

Received on 2-3-1944.
Registered on 13-4-1944.
Decided on 4-6-1945.
Duration - 1 year, 3 months & 2 days.

In the Court of the Subordinate Judge I Class

At Dharwar.

Pleaders. L.C.Civil Suit No. 106 of 1944. Exh.66.

Jamkhandi. Shankar Sadashivrao Borker of Karwar, Gouda Saraswat Brahmin, Age 49, Service. ... Plaintiff.

Against.

Mr. Malapur for 1. 1. The Province of Bombay.

Mr. Pathan for 2 2. Saheb Husen Age 45,) Fakir-Mahamad Gokak of

" Karandikar for 3. 3. Mahmad Gous " 40) Dharwar, Musalman

4. Maktum Husen " 35) Traders.

Pathan for 4 and 5 5. Bibijan Kom Abdul Ahmad Gokak of Do Musalman, Age 60 Household work. .... Defendants.

Claim Rs. 594.

The Plaintiff sues to recover a sum of Rs. 594 and costs of suit from the Defendants or either from the Deft No.1 or Defts 2 to 5 as the case may be. Plaintiff alleges in the plaint that he was working as a Treasurer in the Dharwar Huzur Treasury, from 9-2-1940 to 26-12-1941, that one Mr. A.F. Gokak, since deceased was then holding the post of a shroff in currency notes, that on 3-1-1941, the Plaintiff took out of the single lock balance (Treasurer's balance) currency notes of the value of Rs.5530 and handed them over to the shroff, Mr. A.F. Gokak, that the total sum of Rs.5530 was made up of ten bundles that the said bundles were placed under double locks by the Treasury Officer on 30-12-1940 i.e. the closing day of the previous month after the balance was verified by the personal -- Assistant to the Collector of Dharwar, that exactly the same number of bundles were issued to the shroff on 3-1-1941 after counting the bundles as required by clause (3) Article 14 for the Resource --

Mannually, that Mr. Gokak counted the bundles that were handed over to him and made the currency entries in the shroff Karkun's cash book, after which the Plaintiff attended to his other work, that about 20 minutes after Mr. Gokak complained that the currency notes handed over to him were of the value of Rs.5030 only i.e. Rs. 500 less, that on enquiry, it was found that one bundle of five rupee notes (100 in number) was missing, that a dispute arose as to the legal liability for the missing bundle and the Collector, Dharwar, in his No.E.S.T.S.R.1236 12-8-1941 ordered that the Plaintiff should make good the loss, that on appeal to the Commissioner, S.D. and further to the Provincial Government of Bombay, the order passed by the Collector was confirmed and that in pursuance of the order of the Treasury Officer, Plaintiff has paid Rs. 500 on 3-1-1941.

Plaintiff submits that his responsibility ceased as soon as he handed over the bundles of the currency notes to the shroff, that if thereafter one bundle was found missing, the shroff Mr. A.F.Gokak was responsible for the same, that the orders holding the Plaintiff liable for the said sum of Rs. 500 were Ultra Vires, null and void, that the Province of Bombay was liable to make good the loss to the Plaintiff, since it was under the illegal orders of the Deft No.1, Government and its officers that Plaintiff was compelled to pay Rs. 500, that Mr.Gokak, since deceased, would also have been liable as he has received and retained the benefit under the illegal orders passed by the Government and its officers, that now that Mr. Gokak has died, his heirs have been impleaded to the suit, that Defts 2 to 4 were his brothers and Deft No.5 his wife, that notice as required by section 80 of the Civil Procedure Code has been duly delivered to the Collector, Dharwar, that the cause of action arose on 10-11-1942 when the plaintiff was informed of the final orders of the Government or on 3-1-1941 when the Plaintiff was made to pay the sum of Rs.500 and that therefore the Plaintiff has filed the same to recover the sum of Rs. 500 plus Rs. 94 interest thereon at the rate of 6 % per annum from 3-1-1941 to date of suit.

The Deft No.1, the Provincial Government of Bombay, in its written statement Ex.30 denies the Plaintiff's allegation that he handed over 10 bundles of currency notes of the aggregate value of Rs.5530 to the shroff Karkun, Mr. A.F. Gokak on 3-1-1941 and contends that as a matter of fact he handed over currency notes of the value of Rs.5030 only, that the missing bundle was not among the bundles handed over to the

E.19

shroff, that the Plaintiff simply threw on his table the bundles which he took out from the single lock without counting them and asked the shroff to take charge of them, that the shroff then began to count on the same table and in the presence of the Plaintiff and that after the counting was over, he brought to the notice of the Plaintiff, - 15 or 20 minutes after - the shortage in the notes, that the shroff had made the entry in his cash book before counting and verifying the amount, that the allegations made in the plaint to the contrary were not true, that the shroff had not taken possession of the bundles which were -- thrown by the Plaintiff on his table, that the Plaintiff's liability had not ceased as alleged in the plaint, that the orders passed by the Collector, the Commissioner and the Government were in accordance with law, that Plaintiff was not entitled to the refund of the money recover -ed from him, that the suit should be dismissed and its costs awarded.

The Defts 2 and 4 in their W. Statement at Ex.32 contend that the deceased A.F. Gokak was their brother, that their father was alive, that they were not and could not be the heirs of the deceased, that the claim against them was not in time, that they had no personal knowledge of the allegations made in the plaint, that Plaintiff has no cause of action against their deceased brother or on his estate and that in -- other respects, their contentions were the same as those given by the Deft No.1.

The Deft No. 3 in his W. Statement at Ex. 27 raises similar contentions as the Defts 2 and 4. The Deft No.5 in her W. Statement Ex.33 raises similar contentions. The following issues were framed at Ex.39.

Issues

1. Does Plaintiff prove that he gave currency notes of the value of Rs.5530 on 3-1-1941 to Mr. A.F. Gokak as alleged in para 2 of the Plaint ?
2. If so, is Plaintiff liable for the loss of a bundle of currency notes 100 in number of the value of Rs.5 each ?
3. If not; is Plaintiff entitled to the refund of the sum of Rs.500 from the Deft No.1 or from the other Defendants ?
4. Are Defts 2 to 4 necessary parties to the suit ?
5. Are Defts 2 to 5 personally liable for the suit claim ?
6. What interest, if any should be allowed ?
7. What decree should be passed ?

The following issues were subsequently added on 27-3-1945.

8. Is the claim in time; if so against which of the Defendants ?

9. Are Defts 2 to 4 the heirs of the deceased A.F.Gokak; if not are they necessary parties to the suit ?

10. Is the father of A.F.Gokak, a necessary party to the suit ?

Findings.

1. Not proved.

2. Does not survive.

3. No.

4. No.

5. No.

6. Does not survive.

7. Suit dismissed with costs a all the Defts.

8. No; not in time against any of the Defendants.

9. No.

10. No.

Reasons.

Plaintiff's pleader has given a pursis at Ex. 49 giving up his claim against the defts 2 to 4 on the ground that they were not the heirs of the deceased A.F. Gokak. In para 9 of the plaint, the Plaintiff has made a claim personally against the Defts 2 to 5, That he cannot do. He should have made a claim against the assets of the deceased A.F.Gokak if at all in the hands of his legal heirs. Gokak's father is admittedly alive. Under the Mohomend Law he takes 3/4th as residuary as the deceased left no issue and the wife - Deft No. 5 - takes ¼th. The brothers of the deceased do not get anything out of the assets of the deceased when the father is alive. The father of Gokak is not a necessary party to the suit in the sense that the entire suit is bad in his ~~attempt~~ absence. According to the Mahomedan law, 'if the estate of a deceased person is distributed and the suit is brought against some only of the heirs of the deceased, the creditor is not entitled to a decree for his whole amount of his debt, but only for any amount proportionate to the aggregate share of the Defts in the property ' Vide Mulla's Mohemen Law Section 36 page 20 seventh edition). This disposes of issues Nos. 4,5, 9 and 10.

I now come to the issues Nos. 1 to 3, of which No.1 is most

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important. Plaintiffwas a treasurer in the Huzur Treasury office at Dharwar from 9-2-1940 to 26-12-1941. One Mr. A.F.Gokak, since deceased was holding the post of the shroff in currency notes during the material period. The balance in the Treasurer's cash book as per treasurer's daily balance sheet was Rs. 5530 on 30-12-1940 the last working day of December 1940(Vide Ex.51). The closing balance on the day appears to have been verified by Mr. V.S. Koimattur the then Personal Assistant to the Collector of Dharwar. The Treasury was reopened on 3-1-1941 after the X'mas holidays. The plaintiff's case is that on 3-1-1941 he made over the ten bundles of currency notes of the value of Rs.5530 to Mr.A.F. Gokak who counted the number of bundles in his presence and took possession of them, and made the necessary entries in the shroff Karkun's cash book after which he(Plaintiff) engaged himself in his other work for the day. Plaintiff states in para 3 of the plaint that after about 20 minutes, Mr. Gokak reported that he had received Rs.5030 and not Rs.5530 and that on enquiry it was found that one bundle of five rupee notes (100 in number) was missing. Mr. A.F. Gokak is unfortunately dead, but we have on the record two statements made by him on 3-1-41 and 26-5-41 (Vide Exs. 58 and 59) and a W. statement dated 29-3-41 (Vide Ex. 62) put in by him at the time of the Departmental enquiry made by the Collector of Dharwar. It appears from the said statement that Mr. Gokak's contention was that the plaintiff threw or placed the bundles of currency notes on the table and asked him to take them, that it was not a fact that he i.e. Plaintiff counted the bundles one by one and handed them over to him, that after the bundles were placed on the table he began to count the notes on the Plaintiff's table and after about 15 minutes he found one bundle of 100 notes of the denomination of rupees 5 was short, that he informed about the shortage to the Plaintiff then & there who searched the Treasurer's cash box for the missing bundle but could not find, that he then got a search made in the double lock but the missing bundle was not found.

It is for us to find which of the two versions is true or more near the truth. In this contention Plaintiff's statement recorded by the Treasury Officer on 3-1-1941 is more important than the statement made by him in this suit. Ex. 57 is that statement. Therein Pl has made the following statements : I opened my single lock box on 3-1-1941 between 12 noon & 1 P.M. I handed over the following bun

of currency notes to Mr. Gokak - then follows the description of the currency notes and their value and number of bundles. There was none else near my table at that time. I had sent outside those persons who had come near my table. After I gave the bundles as above, Mr. Gokak began to count them on my table and in my presence. ---
(అవరు నన్న చేంత్రిన మీతో నన్న ఎదురిళి ఎలోనుళ్ళి రుత్తిద్దరు)

I was doing my other work i.e. writing the chits and preparing the bills of all peons. Mr. Gokak was counting the currency notes(మి. గోఖాల్ ఇవర్ ఆయగళన్ను ఎలోనుత్తిద్దరు) and asking the Pattewalas and pensioners not to speak. After about 25/30 minutes Mr. Gokak informed that one bundle of 100 notes of the denomination of Rs.5 i.e. 500 was short and asked me to see whether it was left in my single Lock box. I searched my box but could not find any bundle in it. I had counted the bundles before handing them over to Mr. Gokak and not the currency notes. At the suggestion of Mr. Gokak, I got a search made in the double lock in the presence of Mr. Mummigatti but the missing bundle was not found. I then told what had happened to the Head Accountant. He searched my person and that of Mr. Gokak but the missing notes were not found.

It is clear from the above statement that Mr. Gokak began to -- count the currency notes on the Plff's table and in his presence and brought the shortage to his notice then and there i. e. without having left the place where he was standing. But in his deposition before the Court the Plaintiff has tried to improve upon the story narrated by him before the Treasury Officer. In his examination-in-chief he states :- ' He took delivery of the currency notes on my table and went to his table which was at a distance of about 20 feet. After about 20 to 30 minutes he came back to my table and complained that one bundle of 100 notes of Rs. 5 each was missing or short. ' (Vide Ex.60). In his cross examination he states :- ' I counted the bundles and handed them over to him. Mr. Gokak had brought the shroff Karkun's cash book to my -- table and he made the entry of Rs. 5530 therein in my presence. He counted the number of bundles in my presence but not the currency notes in each bundle. After counting the bundles, he went to his table holding the in his hands. He came back to my table 20 to 25 minutes after saying that one bundle was short.

I am not inclined to believe the Plaintiff in what he has stated in his deposition before the Court on this point. The Plaintiff examined a

witness at Ex. 63 - one Mr. B.G. Divekar, a Government Pensioner -. He seems to support Mr. Gokak's contention on this point. In his cross examination he states :- " Gokak was standing for about 25 minutes in front of Mr. Borkar's table. During all this time, Mr. Gokak was counting the -- bundles again and again. I do not know how many time he counted the bundles" It is simply absurd to suggest that Mr. Gokak took 25 minutes to count the bundle only which numbered at best ten. Not more than a minute would have been required to count the bundles. If Mr. Gokak stood in front of Plff's table, it goes without saying that during this period he must have been engaged not in counting the bundles but in counting the currency -- notes. Lower done, in his cross-examination, the Plaintiff has allowed himself to make the following statement :-

" I counted the bundles by denominations and handed them over to Mr. Gokak who was standing in front of my table. I did not make where -- exactly Mr. Gokak counted the bundles i.e. whether on my table or else -where. I again say that he counted the bundles on my table and in my presence but I do not know where if at all he counted the currency notes in each bundle. It is not a fact that Mr. Gokak told me then and there that one bundle was short. I did not notice what Mr. Gokak did after he took the bundles in his hands. I was busy with my work. My statement before the Treasury Officer is read over to me. It is true that I have stated therein that there was nobody present near my table when I handed over the currency notes to Mr. Gokak. It is fruther true that I have stated in my said statement that Mr. Gokak began to count the currency notes on my table and in my presence. When Mr. Gokak was engaged in counting currency notes I was giving bills and chits to the pensioners. Gokak told me immediately after the counting of the currency notes was over that one bundle of 100 notes of R .5 denomination was missing. He asked ~~to~~ me to see whether that bundle had remained in my cash box and I saw inside the box. I did not say to him that as had given the bundles to him after counting, it was not necessary for me to search the cash box. "

Now, a word about the manner in which the Plaintiff gave his -- dence in the witness box. He never gave any direct reply to any -- question put to him. It took a lot of time before he could be persuaded to give a reply to the question put to him. At times he became obstructive and began to argue things instead of replying to the questions put to him. On the whole he created a more unfavourable impression upon me and

I must say frankly he did not strike me as either truthful or reliable. At first he made a deliberately false statement to the effect that Mr. Gokak counted the bundles, went to his seat and returned after about 20-25 minutes complaining that one bundle was missing. This statement was -- directly opposed to the one made by him before the Treasury Officer on the day the bundle was found missing. He stuck to it in the beginning of his cross examination but when he was confronted with his pevious statement, he admitted after silly-sallying for a while, the correctness of the statem made by him before the Treasury Officer. His own witness, Mr.B.G.Divekar - even if his evidence is taken at its face value - supports the defenc plea that Mr. Gokak began to count the currency notes on the Plff's table and at the end of counting informed the Plaintiff that one bundle consisting of 100 notes of the value of Rs.5 each was missing.

Upon the evidence on the record it is established beyond the -- possiblility of doubt that Mr. Gokak had not left the place after the Plaintiff threw the bundles on the table and before the former brought tothe notice of the latter that one one bundle was missing. Mr. Gokak began to Count the currency notes on the Plff's table and in the latter's presence. Immediately after the counting was finished, he informed the Plaintiff that one bundle was missing. According to the Plaintiff there was no third person near his table at that time. Two things are possible under the circumstances of the case. Either the Plaintiff gave less or that Mr. Gokak must have done away with the bundle. Of the two possibilities, the first is more probable than the second. It is in evidence that Gokak did not stir out of the place till his pockets were searched and he was allowed by the Treasury Officer to go to his seat and attend to his work. There was no -- opportunity for Mr. Gokak to do away with one bundle of currency notes and misappropriate it. The possibility of a third person having removed one bundles is ruled out by the clear statement of the Plaintiff that before he handed over the bundles of currency notes he had cleared the place of outsiders and that there was nobody near his table at that time except himself and Mr. Gokak. In view of the Plaintiff's above statement, it is rather difficult to believe his witness, Mr. Divekar when he states that he was present near Plff's table when the latter handed over the bundle of notes to Mr. Gokak and that he stood there for about 20 or 25 minutes till Mr. Gokak finished the counting. It appears from certain admissions

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made by Mr. Diveker that he was prejudiced against Mr. Gokak and favourably disposed towards the Plaintiff. I am therefore not inclined to place much reliance upon his testimony. Under the circumstances of the case, I am not prepared to hold that the Plaintiff has established beyond the possibility of doubt that he did hand over currency notes of the value of Rs.5530 to Mr. Gokak. The fact that the balance was checked by the Personal Assistant to the Collector on 30-12-1940 does not much help the Plaintiff. It is possible as pointed out by the Collector in his order, dated 12-8-1941 that the missing bundle was removed by somebody on 30-12-1940 after the verification took place. There is no clear evidence to show how and when the bundle disappeared. The responsibility for the loss is that of the Plaintiff if he fails to prove that as a matter of fact he handed over the requisite number of bundles countaining the requisite number of ~~bundles~~ notes to Mr. Gokak. That, in my opinion, he has failed to establish. It is no doubt true that in the shroff Karkun's cash book, Mr. Gokak has shown the opening balance on 3-1-1941 at Rs.5530 (Vide Ex. 61). But this, he appears to have done before countingas stated by him in his statements referred to above, believing that the amount shown as the closing balance on 30-12-1940 was forthcoming as usual. In the light of the evidence before me and the circumstances of the case, I am not prepared to say that he did so after fully counting the currency notes. I record my finding in the negative on issue No.1. In view of my finding on issue No.1, the second issue does not survive. Now coming to issue No.3, it is not understood how the deceased Gokak or his heirs are liable to the plaintiff for the suit claim. It is the Government which has recovered the money from the Plaintiff. If the Government's action was illegal, then it is the latter which will be liable to refund the money to the Plaintiff. If its action was legal, then Plaintiff is not entitled to any relief. When asked how he can hold Gokak's heirs liable for the claim, Plaintiff's pleader replied that they have been impleaded to the suit as proforma parties, that there was no claim as against them and if any claim has been made, it was not being pressed. I therefore record my finding in the negative on issue No.3.

I now come to the question of limitation. It is an admitted fact that the Treasury Officer ordered the Plaintiff on 3-1-1941 to make good the loss (Vide Ex. 64) and That the latter paid the money immediately

(Vide Ex.53). The Collector of Dharwar in his order, dated the 12th August 1941 confirmed the order of the Treasury Officer (Vide Ex. 54). The Plaintiff prefered an appeal to the Commissioner but the order of the Collector so far as it related to the refund of the lost amount was upheld by the Commissioner (Vide Ex. 55). The Plaintiff's appeal to the Government of Bombay, Revenue Department also failed (Vide Ex. 56). In my opinion the Plaintiff's claim against the Government falls either under article 14 or 16 of the first schedule to the Limitation Act. Article 14 reads as follows ' To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for '. The period of limitation is one year from the date of the act or order. Plaintiff does not expressly seek to set aside the orders passed by the Treasury Officer and the Collector, confirmed in appeal by the Commissioner and the Government, but his prayer for refund of Rs.500 with interest, necessarily implies a prayer for setting aside the said orders. These orders were not ultra vires and void ab-initio. They were binding upon the Plaintiff unless and until they were set aside by a competent Court of law. Although the Plaintiff does not specifically and expressly ask for setting aside the said orders, he cannot get any relief unless and until they are setaside. In such cases -- article 14 of the Limitation Act applies even though the suit is framed not as a suit to set aside the order but as a suit to obtain the consequential relief only (Vide Gangu V. Mahanraj 15 Lahore 389 F.B.). Plaintiff has filed this suit on 2-3-1944 i.e.more than three years after he paid the money in pursuance of the order of the Treasury Officer, not even within one year from the final orders of the Government i.e. 16th October 1942. If the -- Plaintiff's claim falls under article 14 as I hold it does, the suit is -- clearly barred by limitation.

Now article 16 reads as follows :- ' Against Government to recover money paid under protest in satisfaction of a claim made by the Revenue -authorities on account of arrears of revenue or on account of demands -- recoverable as such arrears'. The period of limitation is one year from the date of payment. It was conceded that the amount of the missing bundle of notes was recoverable as an arrear of Land Revenue, but it was argued that the Treasurer, the Treasury Officer and the Collector exercising his powers over the Treasury were not Revenue-authorities but Treasury Officers and that therefore article 16 did not apply. In my opinion article 16 applies to two classes of claims against the Government. The first refers to a claim

gainst the Government to recover money paid under protest in satis-faction of a claim made by the Revenue-authorities on account of arrears of Revenue ' and the second to claims to recover money paid under protest ' on account of demands recoverable as such arrears'. In the latter class of cases, it is not necessary that the claim should have been made by the revenue authorities. It is sufficient if the money was paid on account of demands recoverable as arrears of -- revenue. It is immaterial whether the security bond was taken from the plaintiff under the Land Revenue Code 1879, section 23 or under the notification, dated 22-5-1940 No.4874/33 issued in pursuance of section 241 (2) b of the Government of India Act 1935.

It was suggested that the proper article which applies to the facts of this case was article 62 or article 120. Article 62 reads as follows :- ' For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use;' The period of limitation is three years when the money is received. It is clear from the wording of the article itself that it does not apply

to this case. The Government has not received any money from any person for the Plaintiff's use. On the other hand, it has recovered the money from the Plaintiff himself. Even if article 62 is made applicable to the Plff's claim it would not be in time because the suit has not been filed within three years from the day when the money was recovered from the Plaintiff i.e. 3-1-41. The time taken up in appealing to the Collector, Commissioner or the Government cannot be excluded in reckening the period of limitation whether under articles 14, 16 or 62 (Vide Chaturbhuj V. Secretary of State 22 Bombay L.R. 146 and Ganesh V. Secretary of State 44 Bom 451). If article 120 applies, then the claim is obviously in time but I do not think that the residuary article applies to this case. I am of the opinion that either article 14 or article 16 applies and in either case, the claim is not in time.

The result is the suit fails and will be dismissed with costs.

Order.

Suit dismissed with costs. Plaintiff to pay the costs of the Defendants. One set for Deft No.1 and another set for Defts 2 to 5.

4-6-1945.

Sd. M.S.Bagali.
Civil Judge Senior Division.

Typed by Compared by True Copy

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L.C. Civil Suit No 106/44.

Decree.

In the Court of Civil Judge, Senior Division,

At Dharwar.

Shankar Sadashivrao Borkar, age 49, Caste Gowd Saraswat Brahmin, Occupation Government service, of Karwar. .. Plaintiff.

Against.

1. The province of Bombay.
2. Saheb Husen Age 45,) Fakir Mahamad Gokak, caste Mahomedan
3. Mahamad Gous " 40) Occupation Trade of Dharwar.
4. Maktum Husen " 35)
5. Bibijan Abdul Ahamad Gokak (wife) , Age 60 Mahomedan, house hold, Dharwar. Defendants.

Claim Rs. 594 plus interest.

The Plaintiff above named begs to state and submit as follows :-

1. Plaintiff, who is a Government servant, was a Treasurer in the Dharwar Huzur Treasury, from 9-2-1940 to 26-12-1941. Mr. A.F. Gokak now deceased, (the brother) of defts 2 to 4 and husband of deft 5, was then holding the post of Shroff in the currency notes.

2. On 3-1-1941, the plaintiff took out of the single lock balance (Treasurer's balance) currency notes worth Rs. 5530/- and handed them over to the Shroff Mr. A.F. Gokak. The total sum was made up of 1 bundle of a 100 rupee note worth Rs.100, 4 bundles of 10 rupee notes worth Rs. 3100/- 3 bundles of 5 rupee notes, each of 100 in number, worth Rs. 1500, one bundle of soiled 5 rupee notes, 86 in number worth Rs. 430 and another 1 bundle of 5 rupee notes 80 in number worth Rs. 400/- in all 10 bundles worth Rs. 5530/-. These bundles were placed under double locks by the Treasury Officer on 30-12-1940, i.e. the closing day of the previous month, after the balance was verified by the Personal Assistant to the Collector of Dharwar.

Exactly the same bundles that were kept in the Srong room on 30-12-1940 were issued to the Shroff on 3-1-1941 - the next opening day - by counting the number of bundles only as required by clause (3) Article 14 of the Resource Mannual. Mr. Gokak after counting the bundles that were given to him made the necessary entries (the value in rupees of the said 10 bundles) in the Shroff karkun's cash book. After Mr. Gokak verified the amount and took possession thereof, the plaintiff went ~~xx~~ back to his own other work.

3. After about 20 minutes, Mr. Gokak reported that he had only received Rs. 5030/- and not Rs. 5530/-. On enquiry it was found that one bundle of 5 rupee notes (100 in number) was missing. A dispute arose as to the legal liability for the missing bundle, and the -- Collector, Dharwar, ordered under his No.E.S.T.S.R.1236 / 12-8-1941 that the plaintiff should make good the loss. The plaintiff went in appeal to the Commissioner S.D. and further to the Government of Bombay, but the order of the Collector was vonfirmed by them under M.E.S.T.A.P. 606 of 11-11-1941, and R.D.No.6569 E/39 of 16-10-1942, respectively.

4. In pursuance of the order of the Collector, the plaintiff had no other alternative but to pay the sum of Rs.500 which he did on 3-1-1941. It is submitted that the plaintiff's responsibility ceased as soon as the bundles were actually taken possession by the Shroff Mr. A.F. Gokak and that the orders holding the plaintiff liable for the said sum of Rs. 500 are all ultra vires and null and viod. The sum of Rs. 500/- has been illegally and wrongfully recovered from the plaintiff. It is to be specially noted that this is/not a case where the notes in a bundle have come short, but a case where a whol. bundle is found missing after changing hands. Under these circum-stances, plaintiff is compelled to file a suit for the refund of Rs. 500/- with interest at 6 % from 3-1-1941.

5. It is submitted that Deft 1, the Province of Bombay, is liabl to make good the loss since it was under the illegal orders of Defen-dant 1 Government and their Officers that the plff was held liable and the amount recovered from him. Mr. A.F.Gokak deceased, would be also liable as he has received and retained the benefit under the said illegal orders. Now Mr. A.F.Gokak having died, his heirs are made parties in this suit. At all events, either all defendants, jointly and severally, or either defendant 1 or the others in the

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alternative, would be liable to the plaintiff. Hence all the defendants are made parties.

6. Notice of suit against defendant I under section 80 of the Civil Procedure Code has been duly delivered to the Collector, Dharwar.

7. Cause of action arose on 10-11-1942, when plaintiff came to know of the order of Government or on 3-1-1941 when plaintiff was made to pay the sum of Rs.500/-.

8. The suit is valued at Rs. 500/- plus interest at 6 % total Rs.594 both for Court fee and jurisdiction. The Province of Bombay being a party to the suit, the suit is filed in this Court.

9. Plaintiff prays as follows :-

a) Defendants or either Deft 1, or the other defendant as the Court may determine, be ordered to pay Rs. 594 to plaintiff.

b) Future interest upto the date of payment be awarded at 6 %.

c) All costs of suit be awarded.

d) Any other relief to which plaintiff may be found entitled be awarded.

This suit coming on this day for final disposal before Mr. M.S. Bagali, Civil Judge, Senior Division, Dharwar in the presence of Mr. V.G. Jamkhandi pleader for plaintiff, Mr. Malapur, pleader for deft 1, Mr. Pathan pleader for defts 2,4 and 5 and Mr. Karandikar pleader for defendant 3 it is ordered and decreed that -

Suit dismissed with costs. Plaintiff to pay the costs of the defendants. One set for defendant No.1 and another set for defts 2 to

Bill of cossts.

Plaintiff.		Defendant 1.	
1. Stamp for plaint. Rs.	56-14.-0	~~Rxxxxxxx~~	0-0-0
2. Do for Vakalat	0-10-0		0-0-0
3. Do for application Exs.5,6,19,36,40, 44,46,47	5-0 -0	Do for Exs.9,17,21,23,	2-8-0
4. ~~Rxxfor~~ pleader's fees on Rs.594/-	29-11-0	~~Rxxfor~~ pleader's fees, on Rs.594	29-11-0
5. Process fees	8-10-0	Stamp for copy	0-10-0
6. witness Potgi	3 -0-0		
		Total	32-13-0

Bill of costs continued.

Plff.		Deft 1.	
Stamp for copy.	Rs. 0 -10- 0		
Takidi	9 -4 - 0		
Total	113 -11- 0		
Costs disallowed.		Costs disallowed.	
Exs.5,6,19,36,40,44, 46,47.	5 - 0-0	Exs.9,17, 21,23.	Rs. 2-8-0
Balance	108 -11- 0	Balance.	30 - 5 -0

Deft No.3				Defts, 2,4 and 5.			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for Vakalat	0	-10-	0	1. Stamp for Vakalat	0	-10-	0
2. Do for application Ex.25	0	-10-	0	2. Do for applns. Exs.11,18,22,29,31	3	- 2-	0
3. Copying fee and stamp	0	- 0	-0	3. Copying fee & stamp	0	-13	-3
4. Pleader's fees.	29	- 11	-0	4. Pleader's fees	29	-11-	0
Total	30	- 15	-0	Total	34	- 4-	3
Costs disallowed.				Costs disallowed.			
Ex. 25.	0	-10	-0	Exs.11,18,22,29, 31.	3	-2-	0
Balance	30	-5	-0	Balance.	31	-2	- 0

Given under my hand and the seal of this Court this 4th June 1945

Sd. H.R.Kulkarni.
Karkun.

Civil Judge, Senior Division.

Plff's pleader
Deft 1's Pleader

Defts 2, 4 and 5's pleader :-

Deft 3's pleader.

Submitted with pp (S Dwr 2/45) 2X 69-35

2. Copies of Judgment in Dharwar CS no. 106/45 are put up herewith

[illegible]
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P.A

The unsuccessful plaintiff in Dharwar Civil Suit No. 106 of 1944 has filed an appeal in the District Court. The District Government Pleader did not communicate the result of this suit to this office, although the suit was dismissed on 4-6-1945. He should have done so under Rule 129 of the L. O. Rules. His only communication after the brief was sent to him is his letter dated 10-8-1945 requesting sanction for the defence of the appeal. He had not sent copies of Judgment and decree and these had to be called for. There is no copy of the memo of

appeal and no report from the Collector. It is not known whether the D.S.P. followed the procedure laid down in Rule 136 of the L.O. Rules. Before sanctioning the defence of the appeal, the Collector may be requested to send his report under Rule 137 of the L.O. Rules. A copy of the letter to the Collector may be forwarded to the D.S.P. and he may be requested to follow in future the procedure in Rules 129 and 130.

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RM
7/9/45

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A may be done
RR 9/9

Rum 13/9/45

Subtd for mailing
GSC 14/9

AS

Copy of appeal Memo. of Shankar Sadashivrao Borkar of Dharwar.

Being aggrieved by the judgment and decree passed in L.C.sui No.106/44 by Mr.M.S.Bagali,Civil Judge,Senior Dn.Dharwar,the appellant above named begs to prefer this appeal on the following amongst other grounds:-

1. That the decree and judgment are contrary to law and the evidence in the case.
2. That deft.No.1's admission in his written statement th it was in bundles that the currency was issued by the appellant has been disregarded.
3. That the admission of the deceased shroff Gokak that onl bundles of currency notes were placed on table and that bundle - not merely currency notes of the aggregate valu was missing has been disregarded.
4. That the evidence of witness B.J.Divekar has been misappreciated.
5. That the inferences drawn from the statements of Gokak are unwarranted as the references thereto made are shown out of possessive relations.
6. That the lower Court's impressions about the demeanour of the plaintiff are not well founded and that the lower court has allowed itself to be carried by mere impressions.
7. That the utter incoggruity in Gokak's statement that it was after counting individual notes that he found out that a whold bundle was missing has not been noticed by the lower Court.
8. That the lower Court's inferences regarding the time occupied in counting the notes and witness Divekar's statement in this behalf are fanciful and unjustifiable and opposed to the weight of evidence.
9. That the inferences drawn and conclusions deduced are against the rules and procedure governing the business of treasuries and to that extent also contrary to the evidence

on the record.

10. That the view of the lower Court regarding the bar of either article 14 or article 15 of the Limitation Act is wrong as in this behalf thr lower court has failed to properly appreciate the framing of the suit and the way the final relief is sought.

11. Thus it should have been held that either article 48 or article 49 was applicable to the suit, if not article 62 or article 120.

Wherefore it is prayed that this Honourable Court be pleased to set aside the decree of the Court below and to allow the plaintiff appellant's claim with costs throughout.

Subject: Appeal No.194/45 against the order of the F.C.Sub-Judge, Dharwar in L.C.Suit No.106 of 1944.

--

No.LAW.446 Letter. Dharwar, 27/9/1945.

To

The Commissioner, S.D. Belgaum.

I have the honour to submit herewith the letter No.457 dated 24/9/1945 from the District Government Pleader, Dharwar along with a copy of the appeal memo preferred by the plaintiff Mr.S.S.Borkar and a certified copy of the judgment in the lower Court. In the circumstances reported by the Government Pleader, I request you kindly to move Government to accord necessary sanction for the defence in the said appeal (No.194/45 of the District Court Dharwar).

C.C. signed by Collr.

BB.

for Collector of Dharwar.

No. L.S.T.-315.
Office of the Commissioner S.D.
Belgaum, 10th October 1945.

Submitted and recommended.

Remembrancer of Legal Affairs.

Commissioner S.D.

E043
13/10/45

Submitted with pp (S. Dwr 2/45)

Bms
1320

PA Dharwar Civil Suit No 106 of 1944 has been dismissed with separate costs for Govt. The result is favourable and may be recorded. The unsuccessful plaintiff has filed an appeal. The grounds of appeal are covered by the brief and the trial courts judgment. The defence of the appeal may be sanctioned as usual

Pl
13/10

A-LR RJR 15/10

RLA Phur 16/10/45

For manuf 307
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Krishna

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No. 457
Office of the District Govt.
Pleader, Dharwar.
Dated:- 24-9-45.

Subject:- Sanction for the defence of appeal No.194/45 of Dharwar District Court.

To

The Collector of Dharwar.

Sir,

I have the honour to submit as follows with reference to your No.LAW 446 dated 21-9-45 in respect of District Court Appeal No.194/45.

The plff. in the suit has filed the said appeal in the District Court, Dharwar. A report was submitted to the Remembrancer of Legal Affairs, Bombay under this office No.369 dated 10-8-45 requesting him to sanction the defence of the appeal

I have now to request you to kindly move Government to accord sanction for the defence of the said appeal No.194/45 on the lines of the brief accompanying G.R.L.D. No.7852 dated 10th Nov.1944 and the favourable grounds in the judgment of the lower

Court.

The notice in the appeal has already been sent to the Remembrancer of Legal Affairs, Bombay under this office No.369 dated 10-8-45. Certified copy of the judgment and a copy of appeal memo in the said appeal have been sent herewith for reference.

Your obedient servant.

for District Government Pleader.

Suits: 1147

Dharwar.

For a refund of Rs.594 alleged to be illegally recovered from the plaintiff.

GOVERNMENT OF BOMBAY
Legal Department.
Resolution No. 8057
Bombay Castle, 30th October 1945

Read Government Resolution, Legal Department, No. 8057 dated 29th October 1945.

Slip A

at P. 1

In the Court of the First Class Sub-Judge Dharwar.

Civil Suit No.106 of 1944.

Shankar Sadashiv Borkar -- Plaintiff;
Vs.
The Province of Bombay and four others -- Defendents
Claim Rs.500/-

Letter from the District Government Pleader, Dharwar, No.369, dated 10th August 1945, stating that the plaintiff in the suit noted in the margin has preferred an appeal No.194 of 1945 in the Court of the District Judge, Dharwar against the decision of the Civil Judge Senior Division Dharwar and requesting sanction to its defence.

at P. 23

Letter to the Collector of Dharwar No.6829, dated 17th September 1945, requesting him to forward report under Rule No.137 of the Law Officers Rules.

at P. 31

Letter from the Collector of Dharwar, No.L.A.W. 446, dated 27th September 1945, forwarding papers and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No.L.S.T.315, dated the 10th October 1945, forwarding the above with his concurrence.

RESOLUTION:- Sanction is accorded to the defence of the Appeal No.194 of 1945 in the Court of the District Judge, Dharwar on the lines of the brief accompanying Government Resolution, Legal Department, No.7852, dated the 10th November 1944, and the favourable grounds contained in the judgment of the Civil Judge, Seniorrn Division, dated the 4th June 1945.

Issued
30/10.

By order of the Governor of Bombay,

R. M. Mehta

P. N. MOOS,
For Secretary to Government.

Orders at P. 32
Subd. for Signature
Mak
25/10.

Original

AS
Please see n of the orders at P. 33. There should first be a S.R. recording the result of the suit
25/10/45

RC Subd. for Signature
Mak. 30/10
A.S. 30/10/45

To..

98

The Revenue Department.

The Commissioner, Southern Division.

The Collector of Dharwar

The District Government, Pleader, D

Subd. after issue
File in St. Dharwar 2/45

MAK 31/10 A.S.
Rv 31/10

S. Dwe 2/45
1/11/45

Filed on. 21-7-45. Decided on- -:- -16-12-46 43
Duration. 1 year, 4 months & 26 days. 101

In the District Court of Dharwar,
At Dharwar. Ex.14

Appeal No.194 of 45 from decree in sit No.106 of 1944 of the Courtof the Civil Judge, Senior Division (Mr.M.S.Bagali).

B.S. Patil Pl. V.A. Mugali M. } Shanker Vadasiv Borker of Dharwar. . . . . .Appellant(original plff

Against.

Govt. Pl — 1. The Provincial Govt. of Bombay. . . . . .Respondants(original Defts. Nos 1 & 5.
Nr. A.H. Patan 2. Sibijan kom Abdul Ahamad Gokak of Dharwar.

Claim Rs.594/-

Judgment.

This is a suit by the plff who is the Treasurrer in the Dharwar Huzur Treasury against the Provincial Government of Bombay and the heirs of the deceased Mr. Gokak who was a shroff for currency notes working in the same office. He claims refund of Rs.500/- which he was ordered to pay on account of the loss of a bundle of 100 notes of rupee five denomination from the cash of which he was the custodian as Treasurer. The loss occurred on 3-1-41 in the following circumstances. On the previos working day, i.e. on 30th December 1940, the Personal Assistant to the Collector verified the cash at the close of the day and the plaintiff was in cos tody of Rs.5530 in currency notes of various denominations which were kept by him in his box known as 'Single Lock.' The next working day was 3-1-41. At about noon that day the plaintiff haded over the notes to the shroff Mr. Gokak for the day's transactions. Mr. Gokak counted the notes and found that one bundle of 100 notes of Rs.5 denomination was short. A search for the missing bundle was made; but it was not found. That very day the Treasury Officer held an inquiry about the missing bundle and eventually fixed the liability on the plaintiff and the latterwas ordered to pay the amount immediately which he did. Against that order the plaintiff went in appeal to the Collector who confurmed the order of the Treasury Officer. There were appeals to the Commissioner and the Government which were dismissed. Now the plff has to say that these orders of the Treasury Officer and the Collector are ultra vires, null and void. As a matter of fact he was not responcible for the loss. He havded over the bundles of notes after counting them to Mr. Gokak. The latter took them to his table, and on verifyibg them enttered them in his Kharda Book but later, after about 20 or 25 minutes he complained that there was a shortage of currency notes of the value of Rs.500/-. The plaintiff asserts that after he handed over the notes to Mr. Gokak and the latter received them after verify ng his liablity to account for the loss, if any,

ceased. He further suggests that Mr.Gokak might have misappropriated the amount, or that the loss might be due to his neligence. In any case, he was not respocsible to refund the amount and the orders against him therefor, to refund that amount are illegal and void. He has made the calim for refund against the Government and in the alternative against the heirs of Mr Gokak who died some time later. He had joined defendants Nos.2 to4, who are the brothers of Mr.Gokak, and defendant No.5 who is Mr.Gokak's wife as his heirs and made his claim in the alternative against them. At the trial he gave up his claim against defendants Nos.2 to 4 who disputed their liability and also the liability of Mr.Goakak. Defendant No. 1, the Provincial Government of Bombay, resisted the plaintiff's claim on the ground that the latter in fact did not hand over currency notes ofthe value of Rs.5530 to Mr.Gokak as contended by him, but the amount made over to Mr.Gokak was short by Rs.500/-. The Government further contended that the bundle of note might have been misappropriated by the plaintiff, or at least the loss was due to his negligence and therefore he was responsible to refund the amount and the order of the Treasury Officer passed on full consideration of the stateme... of the parties concerned was perfectly legal and intra vires. Defendant No.5 contended that her husband was not responsible for the loss, and she was not liable to reimburse the plaintiff for that loss. There was no cause of action against her. It was the Govt. which ordered the plaintiff to pay. In any case the claim of the plaintiff against her was time-barred

2. The lower Court upheld the def nce and dismissed the plaintiff's claim. Against that decision the plaintiff has come in appeal.

3. The questions for decision are:-

i. Whether the plaintiff proves that he is not responsible for the loss;

ii. If so, whether his claim is not in time ?

4. There is no dispute that the plaintif had in his custody an amount of Rs.5530 on the previous working day on which the cash was checked and verified. The question is whether on the next opening day, i.e. 3-1-41, the plaintiff gave that amoubt to Mr.Gokak, or whether the bundles of notes handed over by him to Mr.Gokak were short by Rs.500/-. In case he failed to prove that he paid the entire amount of Rs.5530/-, then there cannot be any dispute that he is responsible for the loss in whatever way it may have occurred. Now the plaintiff's case is that he handed over ten bundles of currency notes to Mr.Gokak. The latter counted the number of

bundles in his presence and took possession of them and made the necessary entry in the shroff karkun's cash book after which the plff - engaged himself in his other work. He further states that Mr.Gokak took the currency notes to his table and after abount 20 minutes complained that the had received only Rs.5030 and that one bundle of 100 notes of Rs.5 denomination was missing. If this were true, then the necessary inference would be that either Mr. Gokak misappropriated the bulndle or lost it on account of his negligence. But if we consider the statements made by the plaintff as also by Mr.Gokak on that very day when examined by the Treasury Officer, they leave no - room for doubt that the present case of the plaintiff is clearly an after-thought. I need not reproduce the statements of the plaintiff and Mr.Gokak as the relevant portions thereof have been fully quoated in the judgment of the trial Court. The plaintiff then stated that he took out the buldles from his box and on counting them handed them over to Mr.Gokak at his own table. Mr.Gokak had to say that the plff simply took out the bundles from the box and placed them on the table and asked him to take charge of them; and when he counted the bundles and the notes he found one bundle of Rs.5 denomination missing. Whether the plaintiff actually counted the bundles and placed them on his table or did so without counting is not very material. The plaintiff had then clearly admitted that Mr.Gokak stood at his (Plaintiff(s) table and began to count the bundles at the table in his presence and immediately brought the shortage to his notice without leaving that place. Then it was admitted by the plaintiff that there was none else near about his table. When these facts are admitted, it becomes extremely difficult to hold that Mr.Gokak did away with the bundle with the help of some one else. The plaintiff had further admitted in his statement that when Mr.Gokak compained of the shortage and asked him to see if it was in his Single Lock Box he searched the box but the bundle was not there. The matter was brought to the notice of the Head Accountant while Mr.Gokak was still standing at the table of the plff. The Head Accountant searched the persons of both and the places round about the table, but the bundle could not be found. Then it was thought that the bundle might have been through mistake left in the Double Lock. The T.O. was sent for, & he found that the bundle was not in the double lock. All this was done while Mr.Gokak stood at plaintiff's table. It was after all this was done that the Treasury Officer told Mr.Gokak

to go to his table and begin day's transactions.

5. The plaintiff's present case, as I have said above, is clearly an after-thought. He had never alleged before at any time that Mr.Gokak went to his table with the bundles and complained of the loss after about 15-20 minutes. Although he tried to make such a case in his cross-examination he had to admit that what he stated in his statemnt (Ex.57) on 3-1-41 was correct. He has examined one witness Mr.Diveker(Ex.63), a Government pensioner who had on that day gone to the Treasury to draw his pension and who was present when this loss was detected. He tries to suppor' the plaintiff; but it is impossible to believe him when we take into account the plaintiff's statement (Ex.57). Mr.Diveker in his enthusiasm has stated things which on the face of them cannot be true and which even the plaff does not support. He says in his cross-Examination Mr.Gokak was counting the bundles for about half an hour (which even the plaitiff does not say) and during this period I was standing nearby. After counting the bundles Mr.Gokakleft his table saying that they were all right. After Mr.Gokak left I was near Borker's table for about 15 minutes. Then I went to the shroff (for coins).There it took nearly half an hour before I got my money. That shroff was sitting in the same room where Borker was sitting. Their tables were visible from each other. Till I left the Treasury there was no discussion regarding the loss of any currency notes". So this witness wants to suggest that for about an hour and a quarter theloss was not detected. But on the other hand the evidnece shows that within 15 or 20 minutes Mr.Gokak complained of the shortage and immediately the Head Accountant came and searched the persons of the plaintiff and Mr.Gokak. Soon after the Treasury Officer came. He also searched the Double Lock etc. Yet this witness has to say that the loss was not detected for about an hour and a quarter which cannot be believed.

6. It was argued that Mr.Gokak was not telling the truth when he said that it took about 15 or 20 minutes for him to count the notes. It was argued that he had no business to count the individual notes from the bundles. It was enough for him to take delivery by counting the bundles as he was doing before; and when he says that he lingered at the table for 15 or 20 minutes he must have done it with the object of doing away with the notes. I do not think that Mr.Gokak was in any way wrong in counting the notes. He has clearly stated that so far as the bundles of new notes were concerned he did not count the notes, but he counted the notes only from the broken bundles. There was one broken bundle of 10 notes,of

of Rs.10 denomination and there were two more bundles containing 86 and 80 notes of Rs.5 denomination. He was justified in counting the notes in these broken bundles in order to satisfy himself that the notes were of the alleged value, i.e. that any note of a lower denomination had not been included in a bundle of a larger denomination. We also find that the relations between Mr.Gokak and the plaintiff were not cordial. There was some trouble between them previously about the loss of notes of the value of Rs.100, and Mr.Gokak's complaint was that he had unnecessarily to refund the amount, although, according to him, the plaintiff was responsible for the loss. However that may be, it is clear from this incident that there was no mutual confidence between the two. In the circumstances, there is nothing to suspect if Mr.Gokak counted the notes from the broken bundles, and no dishonest motive can be attributed to him if he did so.

7. One fact was very vehemently pressed against Mr.Gokak, and it is that he has entered in his book Rs.5530 as the opening balance of the day. Mr.Gokak is dead, and his explanation is therefore not available about this fact. But the obvious explanation is that he knew that the closing balance of the previous day in the Single Lock was Rs.5530 and the same would be handed over to him and therefore he must have entered that figure as the opening balance of the next day in regard to the Single Lock. I may here point out that no point was made about this fact when Mr.Gokak was examined twice in the course of the inquiries held by the Treasury Officer and the Collector; and this was probably because it was assumed tobe an innocent entry made on the expectation of receiving that much amount from the Treasurer. It was pointed out that not always the same amount is handed over on the next opening day, but sometimes it is even less. It may be so on certain occasions, but we have to remember that this was the opening day of the month when transactions to the of many thousands were to take place. In fact, Mr.Gokak was handed over Rs.81,000/- from the Double Lock for the day's transactions in addition to what he was to receive from the Treasurer. Obviously this entry must have been made by Mr.Gokak in expectation of receiving that much amount from the Treasurer. When Mr.Gokak went to recover the money from the plaintiff and when he found the shortage he was all along standing at the table of the plaitiff. He left the place only after he was told so by the Treasury Officer. When actual

actually he had received only Rs.5030/- he would not have made the entry that he received Rs.5530/-. It is, therefore, plain that he must have made the entry before he was asked to leave the plaintiff's table. If the entry were to be made after the loss was detected, he would certainly not have entered the amount as Rs.5530/-. So it must have been made before. It was also urged that Mr.Gokak should have corrected that entry afterwards. Certainly he could have done that, but the matter was taken up by the superior officers for inquiry and he left the matters as they stood awaiting orders of the superiors in that respect.

8. It was also pointed out that on the previous working day there is some correction made in the balance of that day. The figure '2830' with respect to the bundles of notes of Rs.5 denomination is changed into '2350', and it was argued that this must have been done with a view to misappropriate that amount, but as it was not possible to do it that day the original entry of 2830 was changed into 2350. The suggestion to my mind is very far fetched. Obviously it was a mistake in multiplying. The total number of five rupee notes that day was 466. That figure is not changed. When that figure is multiplied by 5, it comes to 2350, but obviously by mistake it was written 2830, which was subsequently corrected.

9. It is, therefore clear that the plaintiff has failed to prove that he made over to Mr Gokak an amount of Rs.5530. The amount actually handed over was only Rs.5030, and for the loss the plaintiff is responsible.

10. It was argued that the statements made by the plaintiff & Mr.Gokak during the inquiries were not admissible in evidence under s 33 of the Indian Evidence Act. Section 33 is not at all applicable to the case. It relates to the statements of witnesses in certain judicial proceedings. Here the statements were recorded in an inquiry which was aimed at deciding who between the plaintiff and Mr.Gokak was responsible for the loss. The Government's action in ordering the plaintiff to pay the amount is based on these statements. Therefore they form the integral part of the Govt's defence and are thus admissible in evidence. I may as well point out that such an objection was not raised in the trial Court.

11. Having dealt with the merits I shall consider the question of limitation and the responsiblity of defendant No.5. I do not see how there is a cause of action against defendant No.5. The plff is made to pay because of the orders of his superior officers. If he succeeds, he may get the amount back from Government. Mr. Gokak or his heirs are not in any way responsible for the action of the Government or its subordinates.

I find from the judgment of the low r Court that this point was virtually conceded even with regard to defendant, No.5. Any way she has been added, and as I have said, there is no cause of action against her. Supposing there is one, then that is clearly time barred, the suit not having been brought with... two years of the alleged loss. Mr. Pthan for defendant No.5 relied on the provisions of the Legal Representatives' s its Act, XII of 1855 and urged that the suit should have been brought within two years from the date of the loss under any one of the Articles. viz. 33 to 35 of the Indian Limitation Act. It was urged on behalf of the plaintiff that the suit is not under that Act and the two years' period of limitation would not apply. However that may be, to my mind the claim against defendant No.5 is clearly barred at least under Article 36 of the Limitation Act. The plaintiff's claim against Mr. Gokak is that he handed over the whole amount of Rs.5530 to Mr. Gok Gokak who embazzled Rs.500 out of it. In that case the claim comes under Article 36 'for compensation for any mal-feasance, mis-feasance or non-feasance independent of contract and not specially provided for under any other Article'. The period is two years, and the time begins to run when the mal-feasance, mis-feasance or non-feasance takes place. Obviously, according to the plff, the amount was embezzled on 3-1-1941, and the suit not having been brought within two years, it is clearly time-barred. I have already pointed out that on the facts as elicited in the Departmental inquiry the Treasury Officer and the Collector were justified in ordering refund of the amount lost. The orders therefore not in any way being ultra vires or illegal Article 14 of the Limitation Act would come onto play, and the suit not having been brought within one year after the final order of the Government was passed, the claim is clearly time-barred. The claim also falls under Article 16 to which again one year's period of limitation is Prescribed.

12. It was urged that the Collector and the Treasury Officer were not Revenue authorities, and therefore Article 16 of the Limitation Act would not apply. It was pointed out that in certain matters the transactions of the treasury are dealt with directly by the Accountant General and sometimes by the Central Government, and therefore it was urged that the Treasury Officer

when he ordered the fxm refund was not a Revenue authority nor wask the Collector who,is described as only District Officer in the Civil Account Code and in some provisions of The Resource Manual. I do not think that such a contention can be upheld. The Account and the Treasury offices are partm of the Collector's office. There is a Huzur D Deputy Collector or Huzur Mamlatdar and Huzur Accountant who are placed in charge of these offices,and whose status is that of a District Deputy Collector or a Mamlatdar as the case may be and who are transferredto this branch accoridng to administrative convenience. Simply because they are transferred to the Treasury branch they do not cease to be Revenue authorities and their appointments as also the appointment of the Treasurer, the present plaintiff, have all been made under the Land Revenue Code. This will be further clear when we look to Article 109 in the book 'An Introduction to Indian Government's Accounts and Audit (2nd Edn.)'. Under the heading'Personnel' in chapter VIII with regard to the working of a treasury it is stated that when a treasury is not conducted by the Reserve Bank of India or its branches and agencies the personnel of a District Treasury consists of - (1) The Collector or Deputy Commissioner of a District; (2) The Treasury Officer generally a Deputy Collector; (3) The Treasurer, and (4) The Accountant. So all these officers are Revenue authorities. It is not disputed that when there is a loss of public money it could be recovered as arrears of land revenue under Sec.26 of the Land Revenue Code. So the claim in this case was made by the Revenue authorities, and it clearly falls under Article 16 and thus it is time-barred.

13. It was urged on the strength of Rule 33 (4) of the Bombay Civil Service Conduc t and Discipline and Appeals Rules that the Treasury Officer or the Collector could order recovery of the money lost from the paym of theplaintiff and he could not be ordered to pay the whole amount i immediately. And it was argued that the order t o pay the whole amount at once was illegal and ultra vires. Supposing this contention is correct, I do not follow how the order would be ultra vires and illegal ab anitio. If the authority orders recovery of an excessive amount, it was up tothe plaintiff to get it modified, But thereby the order does not become void ab initio. However that may be, to my mind Rule 33 (4) has not application to the present case. The action was obviously taken under s 26 of the Land Revenue Code and there is nothing illegal about it.

14. The result is that the appeal fails.

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O R D E R.

The decree of the lower Coert is confirmed. The appeal. is dismissed with one set of costs to each of the respondents.

16th Decenber 1946.

Sd/ B.K.Dalavi
District Judge.

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Civil Appeal No.194/45. 111
57

Grounds of appeal.

1. That the decree and judgment are contrary to law and the evidence in the case.
2. The deft No.1's admission in his writtenstatement that it was in bundles that the currency was issued by the Appellant, has been disregarded.
3. That the admission of the deceased shroff Gokak that only bundlesof currency notes were placed on the table and that a bundle not merely currency notes of the aggregate value was missing has been disregarded.
4. That the evidence of winess B.G.Divekar has been misappropriated has been ~~misbeen~~ misappreciated.
5. That the inferences drawn from the statements of Gokak are unwarranted, as the r ferences thereto made are shown out of possessive relations.
6. That the L.C's impressions about the demeanour of the plff are not well founded and that the L.C.has allowed itself to be carried by mere impressions.
7. That the utter incongruity in Gokak's statement that it was after counting individual notes that the found out that a whole bundle was missing has not been noticed by the lower Court.
8. That the L.C's inferences regarding the time occupied in counting the notes and witness Divekar's statement in this begalf are fanciful and unjustifiable and opposed to the weight of evidence.
9. That the inferences drawn and conclusions deduced are against the rules and procidure governing the business of treasuries and to that extent also contrary to the evidence on the record.
10. That the view of the L.C. regarding the bar of either article 14 or article 16 of the Limitation Act is wrong, as in this behalf the L.C. has failed to properly appreciate the framing of thesuit and the way the final relief is sought.
11. That it should have been held that either article 48 or Art 49 was applicable to the suit, if not art.62 or 120.

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ಸಿದ್ದಪ್ಪ ನಾಗಪ್ಪನವರು ಗುಬ್ಬಿ

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ಸ್ವಾಮಿ

ಸ್ವಾಮಿ ಬಾಲ ಸ್ವಾಮಿಯವರು ತಿಳಿಯಬೇಕು ಸಿದ್ದಪ್ಪನವರು

ಮಾಲಿಕರು ಸ್ವಾಮಿ

ಸಿದ್ದಪ್ಪನವರು ನಾಲ್ಕು ಮಂದಿ ಮಗಳನ್ನು ನೆಲೆಯಿಸಿ

(೧) ಕಾಲಾವಾಂಡರವರು ಮಗಳಾದ ಸಿದ್ದಮ್ಮನವರನ್ನು ನೆಲೆಯಿಸಿ

ನಾಲ್ಕು ಮಿಲಿಯನ್ ಕಾಗದ ಕೊಟ್ಟಿರುತ್ತಾರೆ. ಸಿದ್ದಪ್ಪನವರು ಮಗಳಾದ ಸಿದ್ದಮ್ಮ

— ಮಾಲಿಕರು

೧೯೨೯ ಇಸವಿ ಮೇ ತಿಂಗಳು ೨೨ ರಂದು ಬೆಳಗಾವಿ ಸಿದ್ದಪ್ಪ ಶೆಟ್ಟರ

ಬಿಸ್ಕೇರ ಅಲ್ಲಿ ನಿಧನರಾದರು — ತಿಮಂಗಿಂದ ಬಂದಿದ್ದನ್ನು

ಮುಂದೆ

(೨) ಮಾಂಬಳಿ ಸಾಕಾರ —

ಸ್ವಾಮಿ ಬಾಲ ಸ್ವಾಮಿಯವರು ನನ್ನ ಬಳಿ ನಾಲ್ಕು ಮಂದಿ ಮಗಳನ್ನು ನೆಲೆಯಿಸಿ

ಕೊಟ್ಟಿರುವುದು ನಾ ಮಾಲ ಇರುವ ನೆಲೆಯಿಂದ ಅಲ್ಲಿಯ ಮನೆ ಜಪ್ತಿ

ಆಗಿರುವ ನಿಮಗೆ ಗೊತ್ತಿದ್ದೇನೆ ತಿಮಂಗಿ ಹೂವಿನ ಹಡಗಲಿ ಮಾಲ

ನಮಗೆ ಸಿದ್ದಪ್ಪ ನಾ ಮಾಲ ಮಾ ಮಗ್ಗಾಯಿಯ ಬಾಕಿಯಾಗಿದೆ —

ಅದನ್ನು ಸಿದ್ದಪ್ಪ ಸಿದ್ದಪ್ಪ ಸಿದ್ದಪ್ಪನವರು ಮಾಲ ಮಾ ಮಗ್ಗಾಯಿ

ಅಂತ ಹೂವಿನ ಹಡಗಲಿ ಸ್ವಾಮಿ ಬಾಲ ಸ್ವಾಮಿಯವರು ಅಂತ ಕೇಳಿ ಬಂದಿದೆ

ಸಿದ್ದಪ್ಪ ಅಂತ ಗೊತ್ತಾಗಿದೆ —

ಸದ್ದ ಸಿದ್ದಪ್ಪ ನಾಲ್ಕು ಮಗಳನ್ನು ಕೊಟ್ಟಿದ್ದಾರೆ ಅಂತ ಅಂದರೆ ನನ್ನ ಅಭಿಪ್ರಾಯ

[illegible] B.K. Dealer [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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[illegible]	[illegible]	[illegible]	

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

S. B. Vaidya

Kalghur

B. K. Dalvi

[illegible]

[illegible]

[illegible]

57

Suits.
Dharwar.
For a refund of Rs. 594 alleged to be illegally recovered from the plaintiff.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1610
Bombay Castle, 18th February 1947.

Read Government Resolution, Legal Department, No. 8087 dated the 30th October 1945.

Letter from the District Government Pleader, Dharwar No. 31 dated the 21st January 1947

In the Court of the First Class Sub-Judge Dharwar. Civil Suit No. 106 of 1944. Shankar Sadashiv Borkar --Plaintiff; Vs. The Province of Bombay and four others. --Defendants. Claim Rs. 500/-	Forwarding uncertified copy of judgment in Civil Appeal No. 194 of

1945, filed by the plaintiff in the case noted in the margin, which was heard by the District Judge, Dharwar on 16th December 1946, when the following order was passed

" The decree of the lower Court is confirmed. The appeal is dismissed with one set of costs to each of the respondents."

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

Subd. for signature
KBB
14/2
S.A.S.

Original

R. M. Mehta,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar.

BM.

Issued
14/2

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Subd after issue.

File in S. Dwr. 2/45

KBB
18/7

S.H.S. RV 8/7

S. Dwr 2/45
22/7